IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.5159 OF 2005

Smt. Jankabai Budha Chaudhari.... Petitioner

versus

Santaji Vikas Sahakari Griha
Nirmal Society & anr. ..... Respondent.

Shri M.M.Shetye for the petitioner
Shri N.N. Bhadrashethe for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 13TH AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. Rejection of an amendment application moved by the plaintiff has given raise to the filing of the present writ petition. The case of the plaintiff as made out in the plaint is that the plaintiff/petitioner had contributed a sum of Rs.21,000/- for the purchase of land by the defendant no.1 proposed society. On the basis of the said contribution a suit has been filed seeking relief of declaration, partition and separate possession of the plaintiff's share in the same. After the evidence of the plaintiff is over, and after commencement of the evidence of the defence, the plaintiff filed an application for amendment seeking

to raise an alternative plea for refund of the amount contributed by the plaintiff for purchase of the land. Perusal of the impugned order reveals that the defendant has claimed to have returned the amount of Rs. 21,000/- to the plaintiff by cheque, which is also so pleaded in the written statement. The learned counsel for the petitioner categorically makes a statement that the petitioner has refused to accept the cheque and has not received the refund of Rs.20,000/-. It is thus clear that the petitioner is entitled to claim by way of alternate relief a sum of Rs.21,000/-. The learned counsel for the petitioner submits that the petitioner does not propose to lead any evidence and thus the progress of the suit will not be halted or obstructed. In this view of the matter and as I find that the proposed amendment is necessary for complete adjudication of the plaintiff's claim the same deserves to be granted. The suit is filed prior to the amendment effected in the year 2002. Hence writ petition is allowed. The impugned order passed by the trial court is quashed and set aside. The amendment application moved by the petitioner thus stands allowed. Rule made absolute in the above terms. No order as to costs.

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